

REMARKS

Claims 1-17 were presented for examination in the present application. The instant amendment cancels claims 14-15 without prejudice and adds new claims 18-19. Thus, claims 1-13 and 16-19 are presented for consideration upon entry of the instant amendment.

Claims 1, 16, and 18 are independent.

Applicants acknowledge with appreciation the indication of allowable subject matter in claims 6 and 17. Independent claim 18 has been added to recite the elements of allowable claim 6, while claim 19 has been added to depend from claim 18 and recite the elements of allowable claim 17. Thus, claims 18 and 19 are in condition for allowance.

Applicants submitted an Information Disclosure Statement in the present application at the time of filing, namely on January 12, 2006. However, a copy of the submitted list, as considered by the Examiner, was not present in the office action. Applicants respectfully request that a copy of the submitted list, as reviewed and initialed by the Examiner, be returned to the Applicants with the next communication.

In addition, Applicants submit herewith a Supplemental Information Disclosure Statement, which includes an English translation of an official action in parallel Japanese Patent Application 2006-525117. Applicants submit that this official action is being submitted in the abundance of caution and is merely duplicative of the Information Disclosure Statement filed on October 3, 2008, which included the references cited by this official action. Applicants also respectfully request that a copy of this list, as reviewed and initialed by the Examiner, be returned to the Applicants with the next communication.

Claims 14 and 15 have been cancelled in the interest of expediting prosecution, rendering moot the rejections under 35 U.S.C. §101.

Independent claims 1 and 16, as well as dependent claims 2-5, 7-13, were rejected under 35 U.S.C. §103(a) over U.S. Patent No. 7,206,517 to Yu et al. (Yu) in view of the Djupsjobacka article.

Applicants respectfully traverse these rejections.

Independent claim 1 requires the step of "calculating the PMD-induced outage probability of the optical transmission system on the basis of **a ratio of a length of time during which the measured signal characteristic fails to meet the threshold condition to a length of the observation period** (emphasis added)".

The Office Action acknowledges that, while Yu discloses measuring the BER, Yu fails to disclose or suggest calculating the PMD-induced outage probability of claim 1. Rather, the Office Action asserts that Djupsjobacka discloses the claimed calculating step and that it would have been obvious to include the teaching of Djupsjobacka in the system of Yu to render claim 1 obvious.

Applicants respectfully disagree.

Specifically, Applicants submit that the PMD-induced outage determined by Djupsjobacka does not determine a ratio based on the length of the observation period as recited by claim 1.

Rather, Djupsjobacka discloses that a determination of the PMD-induced outage probability that is based on the eye-diagram and the group delay as shown at least in Formula 11 and Fig. 1. Accordingly, Applicants submit that Djupsjobacka fails to disclose or suggest, alone or in combination with Yu, calculating the PMD-induced outage probability on the basis of a ratio in the manner recited by claim 1.

Claim 1, as well as claims 2-15 and 17 that depend therefrom, are not disclosed or suggested by the proposed combination of cited art. Reconsideration and withdrawal of the rejection to claims 1-15 and 17 are respectfully requested.

Independent claim 16 recites, in part, "a device for calculating **a ratio of the share of a time period, during which the measured signal characteristic has failed to meet the threshold condition, to the observation period** (emphasis added)".

Again, Applicants maintain that Djupsjobacka discloses that a determination of the PMD-induced outage probability that is based on the eye-diagram and the group delay as shown at least in Formula 11 and Fig. 1. Accordingly, Applicants submit that Djupsjobacka fails to disclose or suggest, alone or in combination with Yu, device for calculating the ratio recited by claim 16.

Claim 16 is not disclosed or suggested by the proposed combination of cited art. Reconsideration and withdrawal of the rejection to claim 16 are respectfully requested.

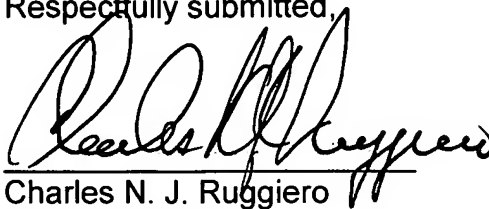
Applicants submit that the Office Action failed to make a *prima facie* case of obviousness of claims 1-13 and 16-17 over Yu in view of Djupsjobacka. Thus, it is respectfully submitted that any action finally rejecting claims 1-13 and 16-17 over Yu and Djupsjobacka alone would be premature in light of the Office Action's failure to present a *prima facie* case of obviousness.

In view of the above, it is respectfully submitted that the present application is in condition for allowance. Such action is solicited.

If for any reason the Examiner feels that consultation with Applicants' attorney would be helpful in the advancement of the prosecution, the Examiner is invited to call the telephone number below.

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Respectfully submitted,



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